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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/679,096	10/04/2000	Sol Aisenberg	EXC-0001	9651
23413	7590	02/17/2005	EXAMINER	
CANTOR COLBURN, LLP			JEFFERY, JOHN A	
55 GRIFFIN ROAD SOUTH				
BLOOMFIELD, CT 06002			ART UNIT	PAPER NUMBER
			3742	

DATE MAILED: 02/17/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	09/679,096	AISENBERG ET AL.
<b>Examiner</b>	<b>Art Unit</b>	
John A. Jeffery	3742	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

1)  Responsive to communication(s) filed on 5/13/04 & 8/17/04.

2a)  This action is **FINAL**.                    2b)  This action is non-final.

3)  Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## **Disposition of Claims**

4)  Claim(s) 41-54 is/are pending in the application.  
4a) Of the above claim(s) 50-54 is/are withdrawn from consideration.

5)  Claim(s) 41-43 is/are allowed.

6)  Claim(s) 44-48 is/are rejected.

7)  Claim(s) 49 is/are objected to.

8)  Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

9)  The specification is objected to by the Examiner.

10)  The drawing(s) filed on 22 January 2001 is/are: a)  accepted or b)  objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)  The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

12)  Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a)  All    b)  Some \* c)  None of:  
1.  Certified copies of the priority documents have been received.  
2.  Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3.  Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

1)  Notice of References Cited (PTO-892)  
2)  Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3)  Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date . . . . .  
4)  Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_ .  
5)  Notice of Informal Patent Application (PTO-152)  
6)  Other: . . . . .

## DETAILED ACTION

### ***Election By Original Presentation***

Newly submitted claims 50-54 are directed to an invention that is independent or distinct from the invention originally claimed for the following reasons:

- I. Claims 41-49, drawn to an apparatus for drying hands, classified in class 392, subclass 380.
- II. Claims 50-54, drawn to a methods of operating a dryer and drying wet hands, classified in class 34, subclass 426.

The inventions are distinct, each from the other because of the following reasons:

Inventions I and II are related as process and apparatus for its practice. The inventions are distinct if it can be shown that either: (1) the process as claimed can be practiced by another materially different apparatus or by hand, or (2) the apparatus as claimed can be used to practice another and materially different process. (MPEP § 806.05(e)). In this case, the apparatus as claimed can be used to practice another and materially different process including a wide variety of convection heating processes utilizing a heated air jet produced by the apparatus structure -- not necessarily for drying a user's wet hands as claimed in the broadest method claims.

Not only could the apparatus structure be used in a myriad of different and diverse drying processes not necessarily involving drying a user's hands, the heated

airstream could be utilized in completely different convection heating applications such as, inter alia, defrosting or deicing a workpiece, curing a coated workpiece, heat shrinking, or convectively heating a space to be heated.

Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.

Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).

Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claims 50-54 are withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03. See also MPEP § 706.07(h) (noting that applicants may not switch inventions as a matter of right in a Request for Continued Examination (RCE) under 37 CFR 1.114).

Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

***Claim Rejections -- Res Judicata***

Claims 44-48 are rejected under the doctrine of res judicata. The examiner notes that applicant filed a Request for Continued Examination (RCE) in this application following a decision by the Board of Patent Appeals & Interferences ("Board") mailed Nov. 20, 2003. In that decision, the Board affirmed the examiner's rejection of claims 36-40 directed to an apparatus for drying hands. The examiner further notes that currently pending claims 44-48 are identical to previously-appealed claims 36-40 respectively.

Because the Board affirmed the examiner's rejection of claims 36-40, the Board decision is the "law of the case" and is therefore controlling precedent. Accordingly, claims 36-40 are properly rejected on res judicata grounds. See MPEP § 706.07(h) ("[A] Board decision in an application is the 'law of the case,' and is thus controlling in that application and any subsequent, related application."). See also MPEP § 706.03(w) ("Res judicata may constitute a proper ground for rejection.").

***Allowable Subject Matter***

Claim 49 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claims 41-43 are allowable over the art of record.

***Final Rejection***

This is a continued examination of applicant's earlier Application No. 09/679,096. All claims are drawn to the same invention claimed in the earlier application and could have been finally rejected on the grounds and art of record in the next Office action if they had been entered in the earlier application. Accordingly, **THIS ACTION IS MADE FINAL** even though it is a first action in this case. See MPEP § 706.07(b). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

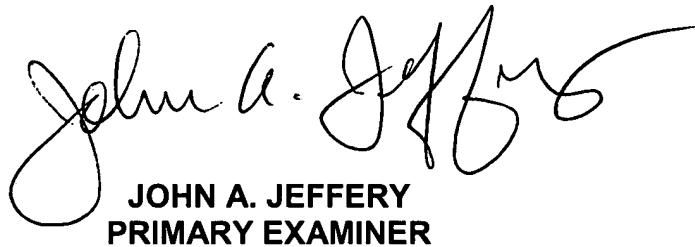
A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no, however, event will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to John A. Jeffery whose telephone number is (571) 272-4781. The examiner can normally be reached on Monday - Thursday from 7:00 AM to 4:30 PM. The examiner can also be reached on alternate Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robin Evans, can be reached on (571) 272-4777. All faxes should be sent to the centralized fax number at (703) 872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



JOHN A. JEFFERY  
PRIMARY EXAMINER

2/15/05